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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13	DARLENE STEVENS, as an individual and)	CASE NO.: 2:17-CV-00970-JCM-PAL
14	as the wife of SCOTT STEVENS; and)	
15	SCOTT STEVENS, as an individual and	)	PLAINTIFFS' OPPOSITION TO
16	as the husband of DARLENE STEVENS,	)	DEFENDANT WAL-MART STORES,
17		)	INC.'S EMERGENCY MOTION TO:
18	Plaintiffs,	)	(1) DISQUALIFY PLAINTIFFS'
19		)	COUNSEL, OR IN THE
20	v.	)	ALTERNATIVE, STRIKE
21		)	PLAINTIFFS' COMPLAINT; AND (2)
22	KEVIN PRENTICE, WAL-MART	)	VACATE MARCH 6, 2018[.]
23	STORES, INC; DOE MAINTENANCE	)	HEARING ON ALL PENDING
24	EMPLOYEE; DOE EMPLOYEE; DOE	)	MOTIONS, FOR VIOLATIONS OF
25	JANITORIAL EMPLOYEE; DOE	)	AMERICAN BAR ASSOCIATION
26	OWNERS I-V; ROE OWNERS;	)	AND NEVADA RULES OF
27	ROE EMPLOYER; and ROE)	PROFESSIONAL CONDUCT 1.6, 1.9[.]
28	COMPANIES,)	AND 1.10 (<i>Docket Filings</i> #66, #67)
)	
	Defendants.)	
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COME NOW PLAINTIFFS DARLENE STEVENS and SCOTT STEVENS, by and through their counsel of record, RYAN M. ANDERSON, ESQ., JACQUELINE BRETTELL, ESQ., and LAUREN D. CALVERT, ESQ. of the law firm of MORRIS//ANDERSON, and present their Opposition To Defendant Wal-Mart Stores, Inc.'s Emergency Motion To: (1) Disqualify Plaintiffs' Counsel, Or In The Alternative, Strike Plaintiffs' Complaint; And (2) Vacate March 6, 2018[,] Hearing On All Pending Motions, For Violations Of American Bar Association And Nevada Rules Of Professional Conduct 1.6, 1.9[,] And 1.10 (*Docket Filings* #66, #67).¹

Plaintiffs' Opposition is based upon the following Declarations, points and authorities, and exhibits, the pleadings and other papers on file herein, and any oral argument this Court may entertain.

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¹ For reasons that are unclear, Defendant Wal-Mart Stores, Inc. ("Walmart") filed its Emergency Motion twice (*Docket Filings* #66, #67). The two documents appear to be identical. Plaintiffs' current submission therefore serves as Plaintiffs' Opposition to each of these filings. Walmart's Emergency Motion will be referred to herein as "Docket Filing #66" and by the singular "Motion."

In addition, because the March 6, 2018, Hearing before United States Magistrate Judge Peggy A. Leen proceeded as calendared, the portion of Walmart's Motion seeking to vacate that Hearing is now moot. Plaintiffs therefore do not address Walmart's argument regarding why "This Court Is Compelled to Vacate the March 6, 2018 Hearing On All Pending Motions[.]" *Docket Filing* #66, 9: 23 - 10: 14.

Finally, Walmart's Motion asserts without any stated basis that "Plaintiffs' counsel deliberately concealed Ms. Gutierrez'[s] involvement in this case" and that Walmart discovered such only because of Ms. Gutierrez's "inadvertent inclusion" on a case-related email. *Docket Filing* #66, 9: 7-22. On that basis, Walmart argues that this Court should strike Plaintiffs' Complaint. *Id.*

Walmart proffers no evidence of deliberate concealment, and no such concealment, deliberate or otherwise, occurred. *See* Declaration of Jacqueline Bretell, Esq. ("Decl. Bretell"), *infra*, ¶ 3. As explained herein, Plaintiffs' counsel did nothing to conceal Ms. Gutierrez's involvement. *Id.*; *see also* Footnote 2, *infra*. Jacqueline Bretell, Esq. *intentionally* included Ms. Gutierrez on her March 1, 2018, email because Ms. Gutierrez had just begun working on this matter. *See* Decl. Bretell, *infra*, ¶ 3.

Finally, nothing in NRPC 1.9 contemplates or authorizes the striking of a party's Complaint or any other sanction on a party for the misconduct of counsel. The Rule addresses only the disqualification of counsel. *See* Nev. R. Prof'l Conduct 1.9(a).

DECLARATION OF JACQUELINE BRETELL, ESQ.
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANT WAL-MART STORES, INC.'S
EMERGENCY MOTION

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5 1. I am an attorney duly licensed to practice law in the State of Nevada and a
6 Partner in the law firm of Bighorn Law, LLC, d/b/a Morris//Anderson, 716 South Jones
7 Boulevard, Las Vegas, Nevada 89107, counsel of record to Plaintiffs in the above-referenced
8 matter.
9

10 2. This Declaration is made in support of Plaintiffs' Opposition To Defendant
11 Wal-Mart Stores, Inc.'s Emergency Motion To: (1) Disqualify Plaintiffs' Counsel, Or In The
12 Alternative, Strike Plaintiffs' Complaint; And (2) Vacate March 6, 2018[,] Hearing On All
13 Pending Motions, For Violations Of American Bar Association And Nevada Rules Of
14 Professional Conduct 1.6, 1.9[,] And 1.10 (*Docket Filings* #66, #67).
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16 3. On March 1, 2018, I intentionally included Siria Gutierrez, Esq. on an email to
17 Walmart's counsel, Robert K. Phillips, Esq., regarding this matter. Ms. Gutierrez had recently
18 joined my law firm and begun working on this case, and I included her on that email as a
19 standard means of keeping her apprised as to its status. No attempt was made by anyone at my
20 firm to conceal, deliberately or otherwise, Ms. Gutierrez's involvement in this matter.
21

22 4. After Walmart counsel Robert K. Phillips, Esq. raised the issue addressed in
23 Walmart's Emergency Motion in a March 1, 2018, email, he persisted through several emails in
24 presenting his incorrect belief that a conflict of interest existed regarding Ms. Gutierrez, and
25 eventually stated that Walmart would move to disqualify the entire Morris//Anderson firm on
26 that incorrect basis. Out of an abundance of caution, I omitted Ms. Gutierrez from subsequent
27 emails in this case pending resolution of this issue.
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DECLARATION OF SIRIA GUTIERREZ, ESQ.
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANT WAL-MART STORES, INC.'S
EMERGENCY MOTION

1. I am an attorney duly licensed to practice law in the State of Nevada and an Associate in the law firm of Bighorn Law, LLC, d/b/a Morris//Anderson, 716 South Jones Boulevard, Las Vegas, Nevada 89107, counsel of record to Plaintiffs in the above-referenced matter. I began working at Morris//Anderson on February 5, 2018.

2. This Declaration is made in support of Plaintiffs' Opposition To Defendant Wal-Mart Stores, Inc.'s Emergency Motion To: (1) Disqualify Plaintiffs' Counsel, Or In The Alternative, Strike Plaintiffs' Complaint; And (2) Vacate March 6, 2018[,] Hearing On All Pending Motions, For Violations Of American Bar Association And Nevada Rules Of Professional Conduct 1.6, 1.9[,] And 1.10 (*Docket Filings* #66, #67).

3. From August 2011 to June 2014, I was employed by the law firm of Phillips Spallas & Angstadt LLP ("PSA"), 504 South Ninth Street, Las Vegas, Nevada 89101. The majority of my work with PSA involved representing Wal-Mart Stores, Inc. ("Walmart") in tort litigation. My work during this time involved an attorney-client relationship with Walmart.

4. My representation of Plaintiffs in this matter is adverse to Walmart.

5. When I ended my relationship with Walmart as counsel in June 2014, Walmart retained all files and documents relating to Walmart that I had in my possession. I retained no files, no documents, and no other information beyond my general experience.

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6. I have not obtained any waiver from Walmart giving informed consent, confirmed in writing related to my current or future representation of any client adverse to Walmart in any matter “substantially related” to one or more matters in which I formerly represented Walmart.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Siria Gutierrez

SIRIA GUTIERREZ

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1 **I. INTRODUCTION**

2 Walmart's Motion is a transparent attempt at retribution. Because Walmart's prior
3 counsel was caught red-handed in multiple ethical violations and was facing imminent
4 disqualification before being replaced by Walmart's current counsel, Walmart now employs a
5 tit-for-tat strategy to improperly attempt to deprive Plaintiffs of their chosen counsel.
6

7 Walmart's motive becomes evident when the substance of its Motion (or, more
8 accurately, its lack of substance) is examined. The Motion simply presents Defense counsel's
9 deeply flawed personal notions of ethical conflicts as self-evident, needing no support in actual
10 Rules, case law, or legal analysis.

11 Building on that defective foundation, the Motion repeatedly asserts simplistic (and
12 incorrect) propositions, without citations, and then employs those pronouncements as though
13 they were actual law. One example: The Motion proclaims that "sacrosanct to the practice of
14 law are the professional rules of conduct which prohibit an attorney from suing a former client
15 without having obtained a waiver from the client permitting such a suit."). This unconditional
16 statement, like so many purported references to law in Walmart's Motion, is egregiously wrong.

17 The fundamental issue here is whether Siria Gutierrez, Esq. (and, by imputation, her law
18 firm, Morris//Anderson) must be disqualified from representing Plaintiffs in this matter because
19 Ms. Gutierrez previously represented Walmart. That question hinges entirely on whether this
20 matter is "substantially related" to any case in which Ms. Gutierrez represented Walmart.

21 The Nevada Supreme Court has defined, and this Court has consistently applied, a three-
22 part test to determine whether one case is "substantially related" to another in this context.
23 Walmart has the burden to prove such "substantial relation" by satisfying all three parts of this
24 test. However, as the analysis herein clearly demonstrates, Walmart fails to satisfy any of the
25 three parts.

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1 Because Walmart fails to meet its burden to prove that this matter is “substantially
2 related” to any case in which Ms. Gutierrez represented Walmart, the Motion to disqualify Ms.
3 Gutierrez fails as a matter of law.

5 In addition, because Ms. Gutierrez is not disqualified from representing Plaintiffs, her
6 firm, Morris//Anderson, likewise is not disqualified by imputation. Plaintiffs therefore
7 respectfully request that this Court deny Walmart’s Motion in its entirety with prejudice.

8 **II. LEGAL ARGUMENT**

9 **A. MS. GUTIERREZ IS NOT BARRED FROM REPRESENTING** 10 **PLAINTIFFS IN THIS MATTER SIMPLY BECAUSE SHE** 11 **PREVIOUSLY REPRESENTED WALMART.**

12 The cornerstone of Walmart’s Motion is its assertion that Siria Gutierrez, Esq., an
13 attorney who represented Walmart from August 2011 to June 2014, has been “surreptitiously
14 prosecuting this case against [Walmart].” *Docket Filing #66*, 3: 11.²

15 Such representation, Walmart claims, violates Ms. Gutierrez’s “duty [to Walmart] which
16 exists in perpetuity absent a waiver.” *Id.* at 3: 22-23. In purported support of this inaccurate
17 statement of law, Walmart asserts, incorrectly, that “sacrosanct to the practice of law are the
18 professional rules of conduct which prohibit an attorney from suing a former client without
19 having obtained a waiver from the client permitting such a suit.” *Id.* at 3: 5-7.

20 ² Walmart asserts that Ms. Gutierrez had been “surreptitiously prosecuting this case” and that Walmart learned of
21 her participation “[o]nly because Plaintiffs’ counsel Jacqueline Bretell inadvertently copied Ms. Gutierrez on a
22 March 1, 2018 e-mail[.]” *Docket Filing #66*, 3: 10-12; 9: 15-16.

23 Walmart proffers no evidence to support its assertion that Ms. Gutierrez was being “surreptitious[.]” or its assertion
24 that Ms. Bretell’s inclusion of Ms. Gutierrez on the March 1 email was “inadvertent[.]” To the contrary, Ms.
25 Bretell *intentionally* included Ms. Gutierrez on that email because Ms. Gutierrez had recently joined the firm and
26 had begun working on this case, and thus needed to be kept apprised of its status. *See* Declaration of Jacqueline
Bretell, Esq. (“Decl. Bretell”), *supra*, ¶ 3. Walmart’s assumption that Ms. Gutierrez’s participation in the case was
a secret that was accidentally exposed *presupposes* that Ms. Gutierrez is ethically precluded from representing
Plaintiffs in this matter, which she is not, as explained herein. *See* Section II.A.

27 After Walmart counsel Robert K. Phillips, Esq. raised this issue in a March 1, 2018, email, he persisted through
28 several emails in presenting his incorrect belief that a conflict existed regarding Ms. Gutierrez, and eventually
stated that Walmart should move to disqualify the entire Morris//Anderson firm on that incorrect basis. *Exhibit 1*;
see also Decl. Bretell, ¶¶ 4, 7. Out of an abundance of caution, Ms. Bretell omitted Ms. Gutierrez from subsequent
emails in this case pending resolution of this issue. *See* Decl. Bretell, ¶ 4. Mr. Phillips misconstrued this sensible
course of action by Ms. Bretell as a tacit admission that a conflict existed regarding Ms. Gutierrez. *Exhibit 1*.

1 **1. Ms. Gutierrez Is Barred From Representing Plaintiffs In This**
 2 **Matter Only If This Matter Is “Substantially Related” To One**
 3 **Or More Cases In Which Ms. Gutierrez Represented Walmart.**

4 Walmart at least cites to the correct Rule in making its argument, NRPC 1.9. That Rule
 5 provides that

6 [a] lawyer who has formerly represented a client in a matter shall not thereafter
 7 represent another person in the same or a substantially related matter in which
 8 that person’s interests are materially adverse to the interests of the former client
 9 unless the former client gives informed consent, confirmed in writing.

10 See Nev. R. Prof’l Conduct 1.9(a) (emphasis added).

11 As Walmart acknowledges, Ms. Gutierrez ceased representing Walmart in June 2014,
 12 and the incident at issue in this case occurred nearly a year later, in May 2015. *Docket Filing*
 13 #66, 3: 16-17; 4: 3. Thus, as this matter did not in any way exist while Ms. Gutierrez
 14 represented Walmart, there is no dispute that this matter is not “the same” as any matter in
 15 which Ms. Gutierrez represented Walmart.³ **Therefore, Ms. Gutierrez has a conflict of**
 16 **interest in this matter based on her prior representation of Walmart only if this matter is**
 17 **“substantially related” to one or more cases in which she “formerly represented**
 18 **[Walmart][.]”** See Nev. R. Prof’l Conduct 1.9(a).

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 26 ³ The parties also agree that Ms. Gutierrez has not obtained any waiver from Walmart “giv[ing] informed consent,
 27 confirmed in writing[.]” related to Ms. Gutierrez’s current or future representation of any client adverse to Walmart
 28 in any matter “substantially related” to one or more matters in which she “formerly represented [Walmart][.]” See
 Nev. R. Prof’l Conduct 1.9(a) (providing that conflict of interest as defined bars representation “unless the former
 client gives informed consent, confirmed in writing”); *see also* Decl. Gutierrez, *supra*, ¶ 6; *see also Docket Filing*
 #66, Exhibit A thereto (email exchange between Jacqueline Bretell, Esq. and Robert K. Phillips, Esq., dated March
 1-2, 2018, in which attorneys for both parties confirm that Walmart has not provided any waiver to Ms. Gutierrez
 pursuant to NRPC 1.9(a)).

1 **2. Walmart Bears The Burden To Prove That This Matter Is**
 2 **“Substantially Related” To One Or More Cases In Which Ms.**
 3 **Gutierrez Represented Walmart.**

4 As this Court has held, citing to the Nevada Supreme Court,

5 [t]o prevail on a motion to disqualify, the party seeking disqualification must
 6 show: (1) the moving party had an attorney-client relationship with the lawyer; (2)
 7 the former representation of the client and the current matter are substantially
 8 related; and (3) the current representation is adverse to the party seeking
 9 disqualification.

10 *Sanchez v. Am. Family Mut. Ins. Co.*, 2012 WL 4498226, at *1 (D. Nev. Sept. 28, 2012) (citing
 11 *Nevada Yellow Cab Corp. v. Eighth Judicial District Ct.*, 123 Nev. 44, 50 (2007)) (emphasis
 12 added).

13 Here, the first and third prongs of this test are not disputed. The parties agree that
 14 “[Walmart] had an attorney-client relationship with [Ms. Gutierrez]” from August 2011 to June
 15 2014. *See* Declaration of Siria Gutierrez, Esq. (“Decl. Gutierrez”), *supra*, ¶ 3; *see also* *Docket*
 16 *Filing #66*, 4: 23-25. The parties also agree that “the current representation [of Plaintiffs by Ms.
 17 Gutierrez and her firm] is adverse to the party seeking disqualification[.]” *i.e.*, Walmart. *See*
 18 Decl. Gutierrez, *supra*, ¶ 4; *see also* Decl. Bretell, *supra*, ¶ 5; *see also* *Docket Filing #66*, 7: 6-
 19 7.

20 Thus, Walmart’s assertion that NRPC 1.9(a) prevents Ms. Gutierrez from representing
 21 Walmart in this matter hinges solely on whether this matter is “substantially related” to one or
 22 more matters in which Ms. Gutierrez represented Walmart. *Sanchez*, 2012 WL at *1; *see also*
 23 Nev. R. Prof’l Conduct 1.9(a).

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1 It is axiomatic that “[t]he burden of proving that two matters are the same or
 2 substantially related falls upon the party moving for disqualification.” *Coles v. Arizona*
 3 *Charlie’s*, 973 F.Supp. 971, 973 (D. Nev. 1997) (citing *Robbins v. Gillock*, 109 Nev. 1015,
 5 1017 (Nev. 1993)); *see also Waid v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 121 Nev.
 6 605, 610 (2005).⁴ Therefore, Walmart bears the burden of proving that this matter is
 7 “substantially related” to one or more cases in which Ms. Gutierrez formerly represented
 8 Walmart.

9 **3. Under This Court’s Precedents Applying Nevada Law,**
 10 **Walmart Fails To Proffer Sufficient Evidence To Prove That**
 11 **This Matter Is “Substantially Related” To Any Case In Which**
Ms. Gutierrez Represented Walmart.

12 As established above, Walmart bears the burden of proving that this matter is
 13 “substantially related” to one in which Ms. Gutierrez represented Walmart. *See* Section II.A.2,
 14 *supra*. Under the standards consistently applied by this Court to disqualification motions,
 15 Walmart essentially fails even to attempt to meet this burden, let alone succeed in doing so.

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27 ⁴ A motion to disqualify an attorney because of a perceived ethical conflict may be seen as presenting issues of
 28 both substantive and procedural law, potentially raising a question as to whether state law or federal law governs. However, the Ninth Circuit has explicitly ruled that state law governs questions of attorney disqualification. *See In re County of Los Angeles*, 223 F.3d 990, 995 (9th Cir. 2000) (“Because we apply state law in determining matters of disqualification, we must follow the reasoned view of the state supreme court when it has spoken on the issue.”).

1 This Court has held that

2 [t]o determine whether a former and present matter are substantially related,
3 Nevada uses the three part inquiry set forth in *Waid v. Eight[h] Judicial District*
4 *Ct.*, 121 Nev. 605 (2005). Under *Waid*, the Court must

5 (1) make a factual determination concerning the scope of the
6 former representation[;]

7 (2) evaluate whether it is reasonable to infer that the confidential
8 information allegedly given would have been given to a lawyer
9 representing a client in those matters[;] and

10 (3) determine whether that information is relevant to the issues
11 raised [i]n the present litigation. []

12 *Sanchez*, 2012 WL at *2 (internal citation omitted) (line breaks added).

13 **a. Scope Of The Former Representation**

14 The *Sanchez* case cited above is instructive and precisely on-point, because it involved a
15 former defense attorney who subsequently represented a plaintiff in suing the attorney's former
16 client:

17 Prior to any event leading to the present case, [plaintiff's counsel Dennis] Prince
18 was counsel for [defendant] American Family [Insurance] for seven years, from
19 2003 to 2010. During that time Prince defended American Family in
20 approximately eighteen different lawsuits involving causes of action for breach of
21 contract, bad faith, and violation of the Nevada Unfair Claims Practices Act.
Based on Prince's prior representation of American Family, American Family has
moved to disqualify Prince from the current action.

22 *Sanchez v. Am. Family Mut. Ins. Co.*, 2012 WL 4498226, at *1 (D. Nev. Sept. 28, 2012).

23 As this summary shows, *Sanchez* presented exactly the same issue now presented in
24 Walmart's Motion. If one substituted "Ms. Gutierrez" for "Prince," "Walmart" for "American
25 Family," Ms. Gutierrez's three years' tenure on defense for Mr. Prince's seven years, her 37
26 cases for his 18, and "tort liability" for the insurance causes of action, *Sanchez* would be
27 identical to this case.

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1 In addition, in *Sanchez*, as here, neither side disputed the attorney-client relationship or
 2 the adverse nature of the current representation. *Id.* Finally, as defendant American Family did
 3 in *Sanchez*, “[b]ased on [Ms. Gutierrez]’s prior representation of [Walmart], [Walmart] has
 5 moved to disqualify [Ms. Gutierrez] from the current action.” *Id.*

6 In *Sanchez*, United States Magistrate Judge Robert J. Johnston masterfully articulated
 7 the proper approach for applying the *Waid* factors. Judge Johnston wrote that, in determining
 8 the scope of the former representation pursuant to *Waid*,

9 the courts look to the specific facts of the pending and prior cases to determine
 10 whether the facts are substantially related and thus whether the scope of the prior
 11 representation interferes with the present representation. []

12 The specific facts of each case are examined because a superficial resemblance
 13 between the matters is not sufficient. []

14 Here, therefore, the Court must look to the specific claims of each case and
 15 determine if there is a factual similarity between this case and the prior cases that
 16 affects the present representation. American Family has the burden of showing
 17 this similarity. [] It has failed to meet that burden. Rather, American Family
 18 asserts that because Prince formerly represented American Family in unrelated
 19 cases of the same type, Prince may “never” represent a party against American
 20 Family. []

21 This argument holds no weight. Prince cannot be barred from representing clients
 22 against American Family merely because he has industry knowledge.

23 *Sanchez*, 2012 WL at *2-3 (emphases and line breaks added).⁵

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25 ⁵ Judge Johnston also identified American Family’s arguments regarding the specific means by which Mr. Prince
 had purportedly obtained confidential information, which mirrored Walmart’s arguments here (*i.e.*, involvement in
 discovery, settlement negotiations, and litigation strategy sessions with his client’s house counsel, where he
 obtained knowledge regarding the strategies, decisions, and inner workings of his client). *Sanchez*, 2014 WL at *3-
 4; *see also* Section II.A.3.b, *infra*.

26 Judge Johnston rejected this argument, in part based on Comment 3 to Rule 1.9 of the Model Rules. *Sanchez*, 2014
 27 WL at *4. That Comment classifies such generalized information as “policies and practices,” which generally do
 not support disqualification without an additional showing of “specific facts [] gained in a prior representation that
 28 are relevant to a subsequent matter.” *Id.*; *see also* Section II.A.3.b, *infra*; *see also* Nev. R. Prof’l Conduct 1.0A
 (“The preamble and comments to the ABA Model Rules of Professional Conduct are not enacted by this Rule but
 may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct, unless there
 is a conflict between the Nevada Rules and the preamble or comments.”).

Here, Walmart's defective argument is precisely the same as American Family's argument rejected by Judge Johnston in *Sanchez*. Walmart presents not a single "specific fact[]" or "specific claim[]" from any case in which Ms. Gutierrez represented Walmart.

Instead, Walmart simply argues that Ms. Gutierrez has "industry knowledge" because she formerly represented Walmart in "unrelated cases of the same type":

This case is identical to the 37 cases in which Ms. Gutierrez defended Walmart. The 37 cases involved personal injury tort claims against Walmart. The cases asserted the same or similar theories of liability, and the same defenses, as are asserted in this case. Therefore, it is axiomatic that Ms. Gutierrez' three years of direct communications with Walmart resulted in obtaining confidential information from the client. By virtue of Ms. Gutierrez' attorney-client relationship with Walmart, she obtained strictly confidential information as to how Walmart handles the defense of cases such as this. Ms. Gutierrez conducted legal research, produced privileged work product, and prepared pleadings and motions derived from such privileged work product.

Docket Filing #66, 7: 28 - 8: 8; *cf. Sanchez*, 2014 WL at *3 (noting that an attorney cannot be disqualified against former client simply for having gained "industry knowledge" by representing that client in "unrelated cases of the same type").

Again, Walmart's argument here exactly mirrors that of the defendant in *Sanchez*. Walmart "asserts that because [Ms. Gutierrez] formerly represented [Walmart] in unrelated cases of the same type, [Ms. Gutierrez] may 'never' present any party against [Walmart]." *Docket Filing #66*, 7: 28 - 8: 8 (emphases added); *see also Sanchez*, 2014 WL at *3 (emphasis added); *cf. Docket Filing #66*, 7: 13-15 ("[T]he matters in which Ms. Gutierrez defended Walmart are not only substantially similar, they are identical to this case."); *see also id.*, 3: 22-23 (asserting that Ms. Gutierrez may never represent any party against Walmart because, absent a waiver, her "duty" to Walmart "exists in perpetuity").

As Judge Johnston found, "[t]his argument holds no weight." *Sanchez*, 2012 WL at *3. Ms. Gutierrez, like Mr. Prince in *Sanchez*, "cannot be barred from representing clients against [Walmart] merely because [s]he has industry knowledge. Accordingly, the scope of the prior representation does not affect the present representation." *Id.* Walmart thus fails to meet its burden to satisfy the first *Waid* factor.

b. Whether It Is Reasonable To Infer That The Confidential Information Allegedly Given Would Have Been Given To Ms. Gutierrez

Walmart states that, during Ms. Gutierrez's representation,

- Ms. Gutierrez directly communicated with Walmart regarding confidential litigation and discovery plans, as well as case resolution strategies. *Docket Filing #66*, 4: 25-26;
- Ms. Gutierrez conducted legal research, produced protected work product, and prepared pleadings and motions derived from such privileged information. *Id.* at 4: 28 - 5: 1;
- Ms. Gutierrez obtained strictly confidential information as to how Walmart handles the defense of cases such as this. *Id.* at 8: 4-6;
- Ms. Gutierrez conducted legal research, produced privileged work product, and prepared pleadings and motions derived from such privileged work product. *Id.* at 8: 6-7;
- Ms. Gutierrez researched, strategized, prepared, drafted, and personally executed [sic], [] pleadings. *Id.* at 5: 3-4; and
- Walmart communicated its views regarding liability, damages, and settlement to Ms. Gutierrez in confidence. *Id.* at 4: 26-27.⁶

⁶ Walmart notes that Ms. Gutierrez, in revising a Reply brief in this matter, cited to a brief that she wrote and filed while representing Walmart in the matter of *Pate v. Wal-Mart Stores, Inc.* *Docket Filing #66*, 5: 3 - 6: 1 ("Why is Ms. Gutierrez's work for Walmart in the *Pate* case significant? As this Court will note, Ms. Gutierrez used the exact same work product [sic] she prepared for Walmart in *Pate* against her former client in this case."); 8: 12-24 ("Clearly, Ms. Gutierrez proudly waived [sic] her *Pate* work product [sic] before her current employers. Clearly, Ms. Gutierrez intentionally and willfully utilized her Walmart work product [sic] against her former client.").

These assertions betray a lack of understanding as to the term "work product." It is hornbook law that any claim to protection under the work product doctrine is waived when the material at issue is disclosed to an adversarial party. *See, e.g., Meoli v. Am. Med. Serv. of San Diego*, 287 B.R. 808, 817 (S.D. Cal. 2003) ("Voluntary disclosure of attorney work product to an adversary in the litigation defeats the policy underlying the privilege."); *see also* 8 CHARLES A. WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2024, at 532 (3d ed. 2010) (stating that disclosure to third party waives work-product protection when such disclosure "has substantially increased the opportunities for potential adversaries to obtain the information").

Thus, Ms. Gutierrez's *Pate* brief ceased to be work product when that brief was filed on behalf of Walmart in the *Pate* matter, as it was thereby exposed to an adversarial party. *Cf.* MODEL RULES OF PROF'L CONDUCT R. 1.9, Comment 3 ("Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying.").

1 On these bases, Walmart asserts that “it is axiomatic that Ms. Gutierrez’[s] three years
2 of direct communications with Walmart resulted in obtaining confidential information from the
3 client.” *Id.* at 8: 2-4.

5 This argument fails to satisfy Walmart’s burden to raise a reasonable inference that
6 confidential information would have been given to Ms. Gutierrez. In *Sanchez*, the defendant
7 made an identical argument, asserting that “[s]pecifically, Prince was involved in discovery,
8 settlement negotiations, and litigation strategy sessions with American Family’s house counsel”
9 and that “[Prince] obtained knowledge regarding the strategies, decisions, and inner workings of
10 American Family in defending bad faith lawsuits.” *Sanchez*, 2014 WL at *3-4.

11 In rejecting this argument as support for an inference that Mr. Prince received
12 confidential information, Judge Johnston noted that

13 NRCP 1.9(a) and NRCP 1. 10[] require the court to “evaluate whether it is
14 reasonable to infer that the confidential information allegedly given to a lawyer
15 would have been given to a lawyer representing a client in those matters . . .” []
16 A law firm opposing disqualification bears the burden of showing that the firm
does not currently possess or have access to sources of confidential client
information, particularly client documents or files.⁷ []

17 In this case, *American Family has not clearly articulated how Prince obtained*
18 *any confidential information.* Rather, it conceded that after it ended its
19 relationship with Prince as counsel, it removed all files and documents relating to
American Family that Prince had in his possession.

20 [continued]

21
22
23 ⁷ As quoted above, Judge Johnston noted that

24 [a] law firm opposing disqualification bears the burden of showing that the firm does not currently
25 possess or have access to sources of confidential client information, particularly client documents
or files.

26 *Sanchez*, 2012 WL at *3 (citing *In re N. Am. Deed Co.*, 334 B.R. 443, 450 (Bankr. D. Nev. 2005)).

27 Here, Plaintiffs’ counsel bears this burden, and therefore submits the sworn statements of Ms. Gutierrez and of
28 Jacqueline Bretell, Esq., a Partner in the law firm of Morris//Anderson, to this effect. *See* Decl. Gutierrez, *supra*, ¶
5; *see also* Decl. Bretell, *supra*, ¶ 6.

Further, the “information” that American Family asserts Prince gained through his representation of American Family is no more than general experience any attorney representing any insurance company would acquire. Prince cannot be faulted for obtaining experience and industry knowledge.

Id. at *3 (emphases and line breaks added) (internal citations omitted).

Likewise, here, when Ms. Gutierrez ended her relationship with Walmart as counsel in June 2014, Walmart retained all files and documents relating to Walmart that Ms. Gutierrez had in her possession. *See* Decl. Gutierrez, *supra*, ¶ 5. Ms. Gutierrez retained no files, no documents, and no other information beyond her general experience. *Id.*

In addition, as Judge Johnston noted in *Sanchez*,

Model Rules of Prof’l Conduct R[ule] 1.9, [comment] 3, states that while general knowledge of a former client’s policies and practices ordinarily will not preclude a subsequent representation, where specific facts are gained in a prior representation that are relevant to a subsequent matter, comment 3 indicates that such a situation supports disqualification. []

Here, it does not appear that Prince obtained knowledge beyond policies and practices. Accordingly, this doctrine does not apply and does not support disqualification.

Sanchez, 2014 WL at *4 (citing MODEL RULES OF PROF’L CONDUCT R. 1.9, Comment 3) (emphases added).

Thus, like the defendant in *Sanchez*, Walmart “has not articulated how [Ms. Gutierrez] obtained any confidential information[,]” but instead has shown only that Ms. Gutierrez obtained “experience and industry knowledge” for which she “cannot be faulted.” *Sanchez*, 2014 WL at *3. Accordingly, as Judge Johnston found regarding Mr. Prince in *Sanchez*, “it is not reasonable to infer that [Ms. Gutierrez] was given confidential information.” *Id.* at *4.⁸

//

//

⁸ In addition, because Walmart identifies no confidential information given to Ms. Gutierrez, Walmart’s assertion that Ms. Gutierrez somehow violated NRPC 1.6 is also incorrect. *Docket Filing #66*, 9: 23 - 10: 4; *see also* Nev. R. Prof’l Conduct 1.6 (headed “Confidentiality of Information,” and providing that “[a] lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraphs (b) and (d).”).

1 **c. Whether That Information Is Relevant To The**
2 **Issues Raised In The Present Litigation**

3 Here, as in *Sanchez*, this third and final factor is mooted by Walmart's failure to identify
4 any confidential information Ms. Gutierrez was given. *Id.* at *4. As Judge Johnston wrote,
5 "[T]here is no confidential information and thus the Court cannot evaluate its relevancy." *Id.*
6

7 As the foregoing demonstrates, Walmart's arguments exactly mirror the arguments of
8 the defendant's counsel that were rejected by this Court in *Sanchez*. Here, as with the defendant
9 in *Sanchez*, (1) Walmart fails to proffer evidence that the scope of the prior representation
10 affects the present representation; (2) Walmart fails to articulate how Ms. Gutierrez obtained
11 any confidential information; and (3) Walmart fails to show (because Walmart failed to identify
12 any confidential information) that any such confidential information is relevant to the issues
13 raised in the present litigation. *Waid*, 121 Nev. at 610; *see also Sanchez*, 2014 WL at *2.

14 Walmart thus fails to meet its burden to prove that this matter is "substantially related"
15 to any matter in which Ms. Gutierrez represented Walmart. *Waid*, 121 Nev. at 610. Therefore,
16 Judge Johnston's conclusion in *Sanchez* applies here as well: Walmart "has failed to meet all
17 three factors of the *Waid* test and thus disqualification is not appropriate." *Sanchez*, 2014 WL at
18 *4.

19 **B. BECAUSE MS. GUTIERREZ IS NOT BARRED FROM**
20 **REPRESENTING PLAINTIFFS IN THIS MATTER, HER LAW**
21 **FIRM LIKEWISE IS NOT BARRED.**

22 Walmart's Motion actually focuses more on the perceived offenses of Morris//Anderson
23 than those of Ms. Gutierrez. However, the Nevada Rules of Professional Conduct make clear
24 that a law firm's conflict of interest in this context can arise only from a conflict of interest
25 affecting an attorney employed by that firm.

26 //

27 //

28 //

//

1 Rule 1.10 of the Nevada Rules of Professional Conduct defines the circumstances in
 2 which a conflict of interest prohibiting an attorney from representing a particular client is
 3 imputed to that attorney's entire firm.

5 While lawyers are associated in a firm, none of them shall knowingly represent a
 6 client when any one of them practicing alone would be prohibited from doing so
 7 by Rules 1.7, 1.9, or 2.2, unless the prohibition is based on a personal interest of
 8 the prohibited lawyer and does not present a significant risk of materially limiting
 the representation of the client by the remaining lawyers in the firm.

9 See Nev. R. Prof'l Conduct 1.10(a) (emphasis added).⁹

10 Nonetheless, Walmart asserts that

11 sacrosanct to the practice of law are the professional rules of conduct which
 12 prohibit an attorney from suing a former client without having obtained a waiver
 13 from the client permitting such a suit. Plaintiffs' counsel, Morris//Anderson
 and/or Bighorn Law, have thumbed their noses at these cornerstones of the
 attorney-client relationship for nothing more than money.

14 *Docket Filing #66, 3: 5-9.*¹⁰

17 ⁹ Rule 1.10 also defines a procedure whereby an attorney may join a new firm without such conflict being imputed
 18 to the firm. The firm must timely screen the attorney from participation in matters against the former client, must
 19 not give the attorney any portion of any fee from those matters, and must promptly give written notice to the
 20 former client to enable monitoring of compliance with the Rule. See Nev. R. Prof'l Conduct 1.10(e). The firm will
 still be barred from representing a client in any matter that attorney had "a substantial role in or primary
 responsibility for" while representing the former client, but other matters against the attorney's former client may
 be preserved to the firm in this way. *Id.*

21 Here, no such screening of Ms. Gutierrez or written notice to Walmart was necessary, as neither this matter nor any
 22 other Morris//Anderson case against Walmart is "the same [as] or [] substantially related" to any case in which
 Ms. Gutierrez represented Walmart, and Ms. Gutierrez is therefore not disqualified from any Walmart matter. *Id.*
 23 (basing any potential imputation of conflict of interest to the new firm on the new attorney's disqualification under
 Rule 1.9); see also Nev. R. Prof'l Conduct 1.9(a) (limiting conflict of interest to "represent[ation of] another person
 in the same or a substantially related matter in which that person's interests are materially adverse to the interests
 of the former client").

25 ¹⁰ It is worth noting that Walmart never explicitly states that Ms. Gutierrez personally has such a duty with respect
 26 to Walmart. Instead, its Motion consistently conflates Ms. Gutierrez and her new firm, as though they were one
 entity with identical duties—e.g., describing Ms. Gutierrez's work for Walmart in detail and concluding that
 27 "Plaintiffs' counsel are breaching their duty to Walmart[.]" *Docket Filing #66, 3: 21-23*. Although this assertion
 uses the plural possessive "their," it is unclear whether Walmart believes such a "duty" attaches to
 Morris//Anderson as a firm, to Ms. Gutierrez, or both.

28 [continued]

1 However, for all its solemn intonations regarding the Rules of Professional Conduct,
 2 “blackletter law,” and “age-old principles,” Walmart egregiously misstates the law applicable to
 3 the situation, *e.g.*, “[T]he professional rules of conduct [] prohibit an attorney from suing a
 5 former client without having obtained a waiver from the client permitting such a suit” and
 6 “[p]ursuant to the blackletter rules of professional conduct, Morris//Anderson and/or Bighorn
 7 Law may not represent Plaintiffs in their action against Walmart.” *Docket Filing #66*, 3: 5-7,
 8 26-27.

9 The basis for these blatantly incorrect statements is of course Walmart’s misguided
 10 notion that Ms. Gutierrez is barred from representing Plaintiffs in this matter simply because
 11 she once represented Walmart.

12 During the course of defending Walmart, Ms. Gutierrez worked directly with the
 13 principals and decision makers of the company. She learned Walmart’s litigation
 14 and settlement strategies, while also obtaining strictly confidential information as
 15 to how Walmart handles the defense of cases, and the resolution of cases,
 16 identical to this case. One need not be a student of law, or even remotely familiar
 17 with the Nevada Rules of Professional Ethics [sic], to understand why Plaintiffs’
 18 counsel are breaching their duty to Walmart; a duty which exists in perpetuity
 19 absent a waiver.

20 *Id.* at 3: 17-23.

21 //

22 //

23 //

24 Under the Nevada Rules of Professional Conduct, any conflict of interest Morris//Anderson might have with
 25 respect to Walmart can originate only in conflict of interest for Ms. Gutierrez arising from her former
 26 representation of Walmart, and then imputed to Morris//Anderson. As NRPC 1.10 states,

27 [w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any
 28 one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.9, or 2.2, unless
 29 the prohibition is based on a personal interest of the prohibited lawyer and does not present a
 30 significant risk of materially limiting the representation of the client by the remaining lawyers in
 31 the firm.

32 *See Nev. R. Prof’l Conduct 1.10(a) (emphasis added).*

1 However, as demonstrated above, Walmart has not met its burden of proving that Ms.
2 Gutierrez’s representation of Walmart resulted in her “obtaining confidential information” or
3 that “the scope of the prior representation affects the present representation.” *See* Section
4 II.A.3, *supra*. Thus, Walmart has not met its burden to prove that this matter is “substantially
5 related” to any matter in which Ms. Gutierrez represented Walmart. *Id.*

6 Because Ms. Gutierrez is not disqualified under Rule 1.9 from representing Plaintiffs
7 against Walmart, no conflict of interest exists to be imputed to Morris//Anderson. Therefore,
8 contrary to Walmart’s multiple unsourced assertions, Morris//Anderson, like Ms. Gutierrez,
9 may represent Plaintiffs in this matter against Walmart.

10 **III. CONCLUSION**

11 According to the website of his law firm, of which Robert K. Phillips, Esq. is the
12 founder and the lead named partner, Mr. Phillips has been practicing law for more than 30 years
13 and is licensed to practice in California and Indiana as well as Nevada.¹¹ He is thus “a student
14 of law” and presumably is at least “remotely familiar with the Nevada Rules of Professional
15 [Conduct].”

16 However, rather than actually applying those Rules and the case law interpreting them
17 (from both the Nevada Supreme Court and this Court), the attorneys at Mr. Phillips’s firm have
18 grounded Walmart’s Motion solely in a deeply flawed “lay” perception of what constitutes a
19 conflict of interest between an attorney and her former client.

20 Thus, instead of engaging in actual legal analysis, the Motion simply (and incorrectly)
21 invokes its own versions of “black letter law,” “cornerstone of American jurisprudence,” and
22 “age-old principles”—always without citation to any actual legal authority. It trumpets
23 incorrect snippets of purported “law,” such as “sacrosanct to the practice of law are the
24 professional rules of conduct which prohibit an attorney from suing a former client without
25 having obtained a waiver from the client permitting such a suit[.]” a statement that is blatantly
26 wrong on its face.

27
28

¹¹ <http://psalaw.net/attorneys/robert-phillips/> (accessed March 19, 2018).

1 As Plaintiffs' foregoing analysis conclusively demonstrates, Walmart's Motion is wrong
2 as a matter of law. Ms. Gutierrez is not disqualified from representing Plaintiffs in this matter
3 against Walmart, as Walmart has failed to meet its burden to show that this matter is
4 "substantially related" to any case in which Ms. Gutierrez represented Walmart. Because Ms.
5 Gutierrez is not disqualified, no conflict of interest exists to be imputed to Morris//Anderson,
6 and that firm also is not disqualified.
7

8 Plaintiffs therefore respectfully request that this Court deny Walmart's Motion in its
9 entirety with prejudice.

10 DATED this 19th day of March, 2018.

11 **MORRIS//ANDERSON**

12 */s/ Ryan M. Anderson*

13

RYAN M. ANDERSON, ESQ.

14 Nevada Bar No. 11040

JACQUELINE BRETTELL, ESQ.

15 Nevada Bar No. 12335

LAUREN D. CALVERT, ESQ.

16 Nevada Bar No. 10534

716 South Jones Boulevard

17 Las Vegas, Nevada 89107

18 *Attorneys for Plaintiffs*

19 *Darlene Stevens and Scott Stevens*
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5, I hereby certify that I am an employee of MORRIS//ANDERSON and that on the 19th day of March, 2018, I caused the foregoing, **PLAINTIFFS' OPPOSITION TO DEFENDANT WAL-MART STORES, INC.'S EMERGENCY MOTION TO: (1) DISQUALIFY PLAINTIFFS' COUNSEL, OR IN THE ALTERNATIVE, STRIKE PLAINTIFFS' COMPLAINT; AND (2) VACATE MARCH 6, 2018[,]** HEARING ON ALL PENDING MOTIONS, FOR VIOLATIONS OF AMERICAN BAR ASSOCIATION AND NEVADA RULES OF PROFESSIONAL CONDUCT 1.6, 1.9[,] AND 1.10 (Docket Filings #66, #67), to be served on the following via this Court's CM/ECF electronic filing system:

Robert K. Phillips, Esq.
Pooja Kumar, Esq.
PHILLIPS, SPALLAS & ANGSTADT LLC
504 South Ninth Street
Las Vegas, Nevada 89101
Attorneys for Defendant
Wal-Mart Stores, Inc.

/s/ Real Jumao-as

An employee of MORRIS//ANDERSON



Jacqueline Bretell <jacqueline@bighornlaw.com>

Stevens v. WalMart

14 messages

Jacqueline Bretell <jacqueline@bighornlaw.com>

Thu, Mar 1, 2018 at 2:35 PM

To: Rob Phillips <rphillips@psalaw.net>

Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>

Hi Rob,

Charles unilaterally set the deposition of Dr. Bascharon for Monday, and Dr. Otten for Tuesday.

The parties' Stip and Order stated that these depositions would not take place until *after* the Court's ruling on Plaintiffs' Motion(s) for Protective Order. As you know, these Motions are set to be heard on Tuesday (the same time as Dr. Otten's deposition).

Can you please confirm whether these depositions will be vacated? If not, I will proceed with filing a Motion for Protective Order.

--

Jacqueline R. Bretell, Esq.

Partner, BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, NV 89107

P: 702-333-1111

F: 702-507-0092

jacqueline@bighornlaw.com

www.bighornlaw.com



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Rob Phillips <rphillips@psalaw.net>

Thu, Mar 1, 2018 at 5:01 PM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>

We'd be glad to reschedule at everyone's convenience provided we stipulate we can take them at a later date.

Rob

Robert K. Phillips

Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

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[Quoted text hidden]

Rob Phillips <rphillips@psalaw.net>

Fri, Mar 2, 2018 at 10:34 AM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>, Rob Phillips <rphillips@psalaw.net>, Kaa Bao Yang <kyang@psalaw.net>

Morning Jacqueline,

We do not have a copy of the conflict waiver which permits your firm and Siria to sue Walmart. Would you please forward me a copy of the executed waiver no later than noon today. If we do not receive the waiver by noon, we will presume you do not possess the necessary document and Walmart will proceed accordingly.

Thank you.

Rob

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

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On Mar 1, 2018, at 4:35 PM, Jacqueline Bretell <jacqueline@bighornlaw.com> wrote:

[Quoted text hidden]

Jacqueline Bretell <jacqueline@bighornlaw.com>
To: Rob Phillips <rphillips@psalaw.net>
Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>

Fri, Mar 2, 2018 at 10:41 AM

There is already a Stipulation on file with the Court regarding this issue.

[Quoted text hidden]

Jacqueline Bretell <jacqueline@bighornlaw.com>
To: Rob Phillips <rphillips@psalaw.net>
Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>

Fri, Mar 2, 2018 at 10:42 AM

Hi Rob,

I am confused by your e-mail. Siria has not represented Wal-Mart since June of 2014. As you know, Ms. Stevens fall took place in May of 2015. I do not see a conflict.

-Jacqueline

[Quoted text hidden]

Rob Phillips <rphillips@psalaw.net>
To: Jacqueline Bretell <jacqueline@bighornlaw.com>
Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>, Rob Phillips <rphillips@psalaw.net>

Fri, Mar 2, 2018 at 10:51 AM

So to confirm, you do not have a waiver executed by Walmart?

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

PHILLIPS SPALLAS & ANGSTADT LLP
ATTORNEYS AT LAW

San Francisco | Las Vegas |
Los Angeles | Napa Valley

On Mar 2, 2018, at 12:42 PM, Jacqueline Bretell <jacqueline@bighornlaw.com> wrote:

Hi Rob,

I am confused by your e-mail. Siria has not represented Wal-Mart since June of 2014. As you know, Ms. Stevens fall took place in May of 2015. I do not see a conflict.

-Jacqueline

On Fri, Mar 2, 2018 at 10:34 AM, Rob Phillips <rphillips@psalaw.net> wrote:
Morning Jacqueline,

We do not have a copy of the conflict waiver which permits your firm and Siria to sue Walmart. Would you please forward me a copy of the executed waiver no later than noon today. If we do not receive the waiver by noon, we will presume you do not possess the necessary document and Walmart will proceed accordingly.

Thank you.

Rob

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

<image793337.png>

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[Quoted text hidden]

[Quoted text hidden]

PHILLIPS SPALLAS & ANGSTADT LLP image793337.png
ATTORNEYS AT LAW 8K

Jacqueline Bretell <jacqueline@bighornlaw.com>

Fri, Mar 2, 2018 at 10:54 AM

To: Rob Phillips <rphillips@psalaw.net>

Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>

That is correct. Again, we do not see a conflict.

-Jacqueline

[Quoted text hidden]

Rob Phillips <rphillips@psalaw.net>

Fri, Mar 2, 2018 at 11:06 AM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>, Siria Gutierrez <siria@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>,

Rob Phillips <rphillips@psalaw.net>

Nevada Rule of Professional Conduct 1.9.

Suing a former client is strictly prohibited absent a waiver. Timing is irrelevant.

I can never sue Walmart in the future unless I obtain a waiver. It's black letter ethics.

Astoundingly, it is evident that you actually used Walmart's work product against it in your reply brief! Siria used the Pate brief which she prepared and signed on behalf of Walmart against her former client.

This is very, very serious and it was done intentionally to harm a former client.

It gets no more serious than this.

We will be filing an emergency motion and a sur reply and of course Walmart will be taking the necessary actions as the aggrieved client.

Robert K. Phillips

Phillips, Spallas & Angstadt LLP

Rob Phillips

Partner

PHILLIPS SPALLAS & ANGSTADT LLP
ATTORNEYS AT LAW

San Francisco | Las Vegas |
Los Angeles | Napa Valley

On Mar 2, 2018, at 12:54 PM, Jacqueline Bretell <jacqueline@bighornlaw.com> wrote:

That is correct. Again, we do not see a conflict.

-Jacqueline

On Fri, Mar 2, 2018 at 10:51 AM, Rob Phillips <rphillips@psalaw.net> wrote:

So to confirm, you do not have a waiver executed by Walmart?

Robert K. Phillips

Phillips, Spallas & Angstadt LLP

Rob Phillips

Partner

<image105711.png>

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s Angeles | Napa Valley

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]



Jacqueline Bretell <jacqueline@bighornlaw.com>

Fri, Mar 2, 2018 at 11:30 AM

To: Rob Phillips <rphillips@psalaw.net>

Cc: Real Jumao-s <real@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>

Thank you for the clarification on your position.

NRPC 1.9 applies in situations where the matter is the same or substantially similar. Again, it has been nearly four years since Ms. Gutierrez has represented Wal-Mart, during which time she has worked for two other law firms. Ms. Stevens' fall took place *after* Ms. Gutierrez ended her representation of your client. Ms. Stevens' case is not the same and is not substantially similar.

With regard to the citation to *Pate*, the pleading is public record.

[Quoted text hidden]

Rob Phillips <rphillips@psalaw.net>

Fri, Mar 2, 2018 at 11:50 AM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>, "siria@bighornlaw.com" <siria@bighornlaw.com>, Rob Phillips <rphillips@psalaw.net>

First you say timing is an issue. Now you say the two identical cases are not substantially similar.

The Federal Court comes down hard on this. Siria was able to use her identical Walmart work product against Walmart because the cases are identical.

And you knew when you hired her that the knowledge she gained while representing Walmart would be useful against Walmart.

This is really bad. Never ever has a Walmart PI attorney been allowed to sue Walmart in a PI case without a waiver. And I can't fathom how any attorney could think it is remotely proper to sue a former client in the exact same type of case, using privileged information.

We will be asking that the Complaint be stricken and of course your firm be disqualified.

The disqualification is mandatory.

Honestly Jacqueline, I'm speechless. I'm stunned you think this is proper.

Bizarrely, I am emailing in this case with an attorney who has sued Walmart, and who was my very Associate charged with defending Walmart.

We have truly fallen down the rabbit hole if you think this is proper.

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner



San Francisco | Las Vegas |
Los Angeles | Napa Valley

On Mar 2, 2018, at 1:30 PM, Jacqueline Bretell <jacqueline@bighornlaw.com> wrote:

Thank you for the clarification on your position.

NRPC 1.9 applies in situations where the matter is the same or substantially similar. Again, it has been nearly four years since Ms. Gutierrez has represented Wal-Mart, during which time she has worked for two

other law firms. Ms. Stevens' fall took place *after* Ms. Gutierrez ended her representation of your client. Ms. Stevens' case is not the same and is not substantially similar.

With regard to the citation to *Pate*, the pleading is public record.

On Fri, Mar 2, 2018 at 11:06 AM, Rob Phillips <rphillips@psalaw.net> wrote:

Nevada Rule of Professional Conduct 1.9.

Suing a former client is strictly prohibited absent a waiver. Timing is irrelevant.

I can never sue Walmart in the future unless I obtain a waiver. It's black letter ethics.

Astoundingly, it is evident that you actually used Walmart's work product against it in your reply brief! Siria used the Pate brief which she prepared and signed on behalf of Walmart against her former client.

This is very, very serious and it was done intentionally to harm a former client.

It gets no more serious than this.

We will be filing an emergency motion and a sur reply and of course Walmart will be taking the necessary actions as the aggrieved client.

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

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[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

PHILLIPS SPALLAS & ANGSTADT LLP image816824.png
ATTORNEYS AT LAW 8K

Jacqueline Bretell <jacqueline@bighornlaw.com>

Fri, Mar 2, 2018 at 11:53 AM

To: Rob Phillips <rphillips@psalaw.net>

Cc: Real Jumao-s <real@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>

It appears we have come to an impasse on this, Rob. I will keep an eye out for your Motion so we can oppose the same.

-Jacqueline

[Quoted text hidden]

Jacqueline Bretell <jacqueline@bighornlaw.com>

Fri, Mar 2, 2018 at 11:53 AM

To: Kimball Jones <kimball@bighornlaw.com>

[Quoted text hidden]

Rob Phillips <rphillips@psalaw.net>

Fri, Mar 2, 2018 at 12:08 PM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>, Kaa Bao Yang <kyang@psalaw.net>, "siria@bighornlaw.com" <siria@bighornlaw.com>, Rob Phillips <rphillips@psalaw.net>

Not sure why you are suddenly taking Siria off the email string if it's not an issue?

My client is furious and feels very betrayed by its former attorney.

We should have the papers filed by this evening.

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

PHILLIPS SPALLAS & ANGSTADT LLP
ATTORNEYS AT LAW

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On Mar 2, 2018, at 1:53 PM, Jacqueline Bretell <jacqueline@bighornlaw.com> wrote:

It appears we have come to an impasse on this, Rob. I will keep an eye out for your Motion so we can oppose the same.

-Jacqueline

On Fri, Mar 2, 2018 at 11:50 AM, Rob Phillips <rphillips@psalaw.net> wrote:

First you say timing is an issue. Now you say the two identical cases are not substantially similar. The Federal Court comes down hard on this. Siria was able to use her identical Walmart work product against Walmart because the cases are identical. And you knew when you hired her that the knowledge she gained while representing Walmart would be useful against Walmart. This is really bad. Never ever has a Walmart PI attorney been allowed to sue Walmart in a PI case without a waiver. And I can't fathom how any attorney could think it is remotely proper to sue a former client in the exact same type of case, using privileged information. We will be asking that the Complaint be stricken and of course your firm be disqualified. The disqualification is mandatory. Honestly Jacqueline, I'm speechless. I'm stunned you think this is proper.

Bizarrely, I am emailing in this case with an attorney who has sued Walmart, and who was my very Associate charged with defending Walmart.

We have truly fallen down the rabbit hole if you think this is proper.

Robert K. Phillips
Phillips, Spallas & Angstadt LLP

Rob Phillips
Partner

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s Angeles | Napa Valley

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Kaa Bao Yang <kyang@psalaw.net>

Fri, Mar 2, 2018 at 8:25 PM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>, "siria@bighornlaw.com" <siria@bighornlaw.com>, Rob Phillips <rphillips@psalaw.net>

Good Evening Ms. Bretell,

In furtherance of Rob's correspondence and as a courtesy, please be advised that we will be filing the motion tomorrow.

Thank you,

Kaa Bao

Kaa Bao Yang
Associate Attorney



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From: Rob Phillips

Sent: Friday, March 2, 2018 12:08 PM

To: Jacqueline Bretell <jacqueline@bighornlaw.com>

Cc: Real Jumao-s <real@bighornlaw.com>; Kaa Bao Yang <kyang@psalaw.net>; siria@bighornlaw.com; Rob Phillips <rphillips@psalaw.net>

Subject: Re: Stevens v. WalMart

Not sure why you are suddenly taking Siria off the email string if it's not an issue?

My client is furious and feels very betrayed by its former attorney.

We should have the papers filed by this evening.

Robert K. Phillips

Phillips, Spallas & Angstadt LLP

Rob Phillips

Partner

rphillips@psalaw.net

415-278-9400 ext. 101

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